



Nebraska Resources

Newsletter

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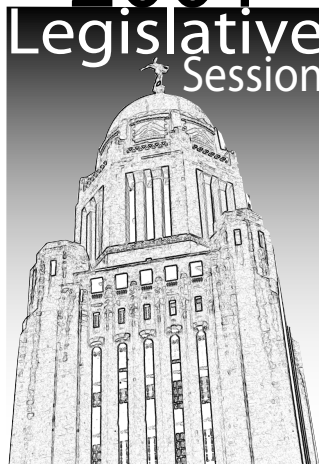
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Editor's Note: The Water Administration Division article in this newsletter is the second in a series on the Divisions, Field Offices and Programs of the Department of Natural Resources.

2001 Legislative Session



By Jim Cook

The following is a summary of resources related bills that were enacted during the 2001 Legislative Session.

LB 129: DNR Amendments

Among other things, LB 129 (1) eliminates the dollar cap on **total project cost** for projects that are funded by the Resources Development Fund; (2) makes it easier to obtain a temporary permit for surface water for road construction or other public use construction when the total amount of water requested is less than 10 acre-feet; and (3) allows

diversion of water from any stream, reservoir, or canal by any fire department or emergency response service for the purpose of extinguishing a fire in progress and allows the installation of "dry wells" designed to aid withdraw of such water when needed.

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Water Administration Division

By Susan France

The Water Administration Division of the Department of Natural Resources is responsible for maintaining the State's ground water well registration program, for administering a State required ground water permit program, for coordinating reviews of the NRD's ground water management plans, administering and adjudication of the State's surface water appropriation program and the supervision of field office's administration of water rights.

Ground Water Registrations

All water wells, except for test holes, dewatering wells with intended use of less than 90 days, and domestic water wells constructed prior to September 9, 1993, are required by law to be registered with the Department. For the last several years we have **registered**

approximately 6,000 wells a year. As of the end of the first quarter of 2001, there were **117,662 water wells registered**. Of these, **82,735 were irrigation wells**. The next largest category is **domestic wells at 11,695**.



The water well registration fees collected help run two programs. Thirty dollars of each fee goes into the Water Well Decommissioning Fund that is used by the local natural resources districts to cost share proper decommissioning of wells. The rest of the

fee goes to the Health and Human Services System to help run the Water Well Contractor's Licensing Program.

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LB 135: Amendments to the Groundwater Management and Protection Act

LB 135 makes several changes in the Groundwater Management and Protection Act. First, it allows natural resources districts to limit or prevent the expansion of irrigated acres. Second, it eases the restrictions on closing management areas or portions of management areas to the issuance of additional permits and eliminates the five-year time limit on how long an area can be thus closed without additional board action. Third, LB 135 eliminates the five-year limit on the time period for which NRDs can have different water allocations for different irrigation systems; e.g. pivot versus gravity systems. Fourth, it eliminates the five-year limit on the length of groundwater allocation periods. Fifth, it allows the amounts of water allocated to be used in any manner approved by the district. Last, it eliminates the requirement that allocation, rotation and reduction controls be reviewed at least every three years.

LB 329: Rename the Natural Resources Enhancement Fund/Provide Funding for the New Water Quality Fund/Allow Additional NRD Taxation for Water Quality Purposes

Many legislative bills were introduced this year to provide funds for natural resources district water quality programs. The purpose of all those bills was to replace, at least in part, the \$1 per ton fertilizer fee previously allocated to districts through the Natural Resources Enhancement Fund. In the end, LB 329 and its companion "A" bill were adopted. Together, they will provide about \$1.25 million per year in funding for such water quality programs from three primary sources: (1) pesticide registration fees; (2) pesticide applicator licenses; and (3) state general funds. The Fund, which will still be administered by the Department of Natural Resources, and pursuant to rules and regulations adopted by the Natural Resources Commission, was renamed the Natural Resources Water Quality Fund.

While LB 329 provides new sources of state funds for NRD water quality programs, the total amount is expected to be only about ½ of the \$2.5 million dollars that was generated per year from the \$1 per ton fertilizer fee. To allow natural resources districts to make up the shortage, LB 329 also allows them to increase their property taxes for water quality programs without violating the 2.5% annual budget lid. Most districts will need to take advantage of that additional property tax authority as under LB 329 they will have to match every \$2 received from the Water Quality Fund with at least \$3 from other district sources. Under the Enhancement Fund, the required match was only \$1 in district funds for every \$3 in state funds.

LB 329 also requires the Department of Environmental Quality to prepare an annual report (1) outlining the extent

of groundwater quality monitoring by natural resources districts during the preceding calendar year and (2) analyzing the NRD data for the purposes of determining whether or not groundwater quality is degrading or improving. NRDs are required to submit their groundwater quality data to DEQ in a timely manner so that DEQ's report may be prepared each year no later than December 1 starting in 2001. Also the bill requires each NRD to submit an annual report to the Natural Resources Committee of the Legislature detailing all of its water quality programs conducted in the preceding year, explaining how the funds received from the Water Quality Fund have been expended, and listing any unfunded projects. The NRD reports will also be due on December 1 starting in 2001.

LB 329 had the emergency clause and took effect when signed by Governor Johanns on May 30, 2001.

LB 472: Transfers of Groundwater for Human Domestic Use

Before the enactment of LB 472, there was no statutory basis for transferring groundwater off the overlying land for purely domestic purposes. LB 472 authorizes such transfers to the extent the water is required for human needs if: (1) all land rights necessary to effect the transfer have been acquired and (2) the capacity of the well or series of wells connected together for such purpose does not exceed 50 gpm. Potential liability for damages will exist only for interference with the use of groundwater by another person as a result of the lowering of the water table or reducing artesian pressure. The provisions of the Act are also applicable to transfers begun before the effective date of the Act.

LB 667: Water Wells in Basins Subject to Interstate Litigation/Modification of the 50-Foot Statute/Well Registrations/Well Decommissionings, etc.

LB 667 ended up being the "Christmas tree" natural resources bill for the 2001 legislative session. As finally adopted, it included the following provisions, all of which took effect on May 21, 2001 because the bill had the emergency clause: (1) the "50-foot" statute, which requires surface water permits for irrigation wells constructed after July 1, 2000 if they are located within 50 feet of the banks of a stream, now applies only to those wells if they are within 50 feet of the banks of a channel of a stream; (2) several updates were made to the Nebraska Safe Drinking Water Act; and (3) natural resources districts in basins for which Nebraska is or becomes a defendant in interstate water litigation may establish different provisions for restriction of water wells drilled after certain dates. For the Republican River basin, the before and after date is January 1, 2001; for all other basins, the date would be the future date, if any, that litigation is commenced over an interstate water compact or decree.

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Shorts

New Field Office Supervisor/Address

The supervisor and address for the Cambridge field office has changed. *Brad Edgerton*, is the new supervisor at the Cambridge office and the new address is **622 Patterson, P.O. Box 426, Cambridge, NE 69022**. The phone number for the Cambridge Office **308-697-3730** remained the same.

Census 2000 Population Data



The **Natural Resources Data Bank** has recently processed the **Census 2000 Population**, PL94-171, data by counties and natural resources districts, using dynamic processing and Internet Map Server applications. The associated tabular data and interactive census maps are available over the Internet at its web site:

<http://www.nrc.state.ne.us/databank/census/pop.html>

The PL94-171 population data, released by the U. S. Bureau of the Census, is used by the state government and its political sub-divisions for various population counts and redistricting purposes. If you have any questions or need further information, please contact the Data Bank at **402-471-3964**.



2000 Population Data

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Other provisions of the bill will take effect on **July 1, 2001** because that date is specified as the operative date for those other provisions. Those provisions are: (1) revision and clarification of the water well registration statutes, including a requirement that on-line registration be made available to water well contractors by January 1, 2002; (2) a new requirement that when land outside of a municipality is transferred to a new owner, notice of the change of ownership must be filed with the Department of Natural Resources within 60 days **if** the land has on it a water well which is registered or is required to be registered or if the land has attached to it a surface water right other than a water right in the name of an irrigation district, a public power and irrigation district, or a mutual irrigation company;

a uniform fee will be charged by the Department of Natural Resources for all such notices and for the ownership updates that are filed under other applicable statutes; and (3) all water wells other than driven sandpoint wells must be decommissioned by a licensed water well contractor or pump installation contractor. A landowner may still decommission his or her own driven sandpoint well if it is on land owned and used by him or her for farming, ranching, or agricultural purposes, or is his or her place of abode.

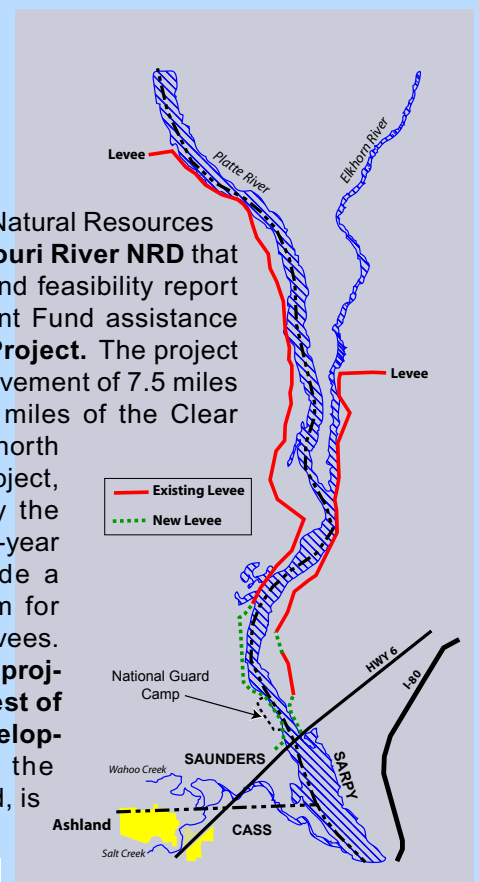
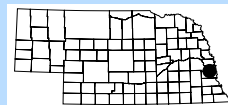
For additional information about any of these bills, other natural resources related bills introduced in the 2001 legislative session, or interim study resolutions, please consult the Department's homepage at

<http://www.dnr.state.ne.us>.

Western Sarpy/ Clear Creek Project Proposal

By Tom Pesek

At its May 23, 2001, meeting, the Natural Resources Commission advised the **Papio-Missouri River NRD** that it may proceed with an application and feasibility report for Nebraska Resources Development Fund assistance for the **Western Sarpy/Clear Creek Project**. The project involves the reconstruction and improvement of 7.5 miles of the Western Sarpy Levee and 9 miles of the Clear Creek Levee along the Platte River north of Highway 6 east of Ashland. The project, designed and principally funded by the Corps of Engineers, would provide 50-year flood protection and would include a voluntary floodway buyout program for structures (cabins) riverward of the levees. The project proposal indicated a **total project cost of \$15,000,000** with a **request of \$4,000,000 from the Resources Development Fund**. A ring levee around the National Guard Camp, Camp Ashland, is being planned as a separate project.



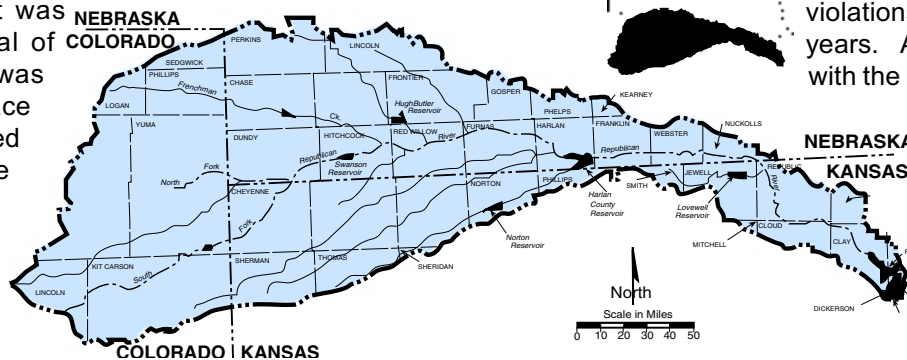
Republican River Lawsuit

In May of 1998, the State of Kansas filed a lawsuit in the Supreme Court of the United States alleging that Nebraska has violated the Republican River Compact by consuming more water than it was allocated under the Compact thus depriving Kansas of its share. Included in the Kansas complaint was that the withdrawal of water from wells was depleting the surface water flows allocated in the Compact. The Supreme Court accepted Kansas complaint and appointed Vincent McKusick as Special Master to hear the evidence and conduct the trial in the case. Nebraska filed a Motion to Dismiss the suit based on the theory that groundwater was not contemplated as being a part of the virgin water supply which was allocated to the States under the Compact. That motion was denied in January, 2000 with

the Special Master finding that the Compact restricts a State's consumption of groundwater to the extent that it depletes stream flow in the basin. Special Master McKusick then established a timeline for how the case would proceed. Under

go back to those numbers and "recalculate" them in order to improve the status of their case. While Nebraska was disappointed with the Master's decision regarding the inclusion of groundwater, the binding nature of the previous computations made by the decision show very little, if any, violations of the Compact for those years. A number of issues dealing with the pre-1995 numbers are being readied for briefing for the Special Master and a decision on those issues will probably be made sometime late this year or early next year. That decision will narrow the issues to be looked at during the actual trial in

2003. At the same time the parties are in the midst of their discovery work, obtaining documents and conducting interviews of potential witnesses, in preparation for the trial. Needless to say, with the very ambitious trial schedule, our legal and technical experts are being kept very busy.



that timeline trial of the case is scheduled to start in the Spring of 2003. Another important decision made by the Special Master was that the computations and allocations made by the Compact Commission in years prior to 1995 are binding among the States. That means that no State can

Floodplain Mapping Receives Recognition

The Floodplain Mapping Program of the Department of Natural Resources was recently recognized by the Federal Emergency Management Agency (FEMA) as one of the outstanding Cooperating Technical Partners (CTP) initiatives in the country. One of the key objectives of FEMA's CTP program is to increase local involvement in, and ownership of, the floodplain mapping process. CTP includes state and local governments that are using new technologies and innovative methods to expedite floodplain mapping.

The DNR has developed an automated floodplain mapping process that uses the power of Geographic Information System (GIS) and a variety of statewide databases to delineate 1% frequency floodplains. On June 5, 2001, Brian Dunnigan, Floodplain

Management/Dam Safety/Survey Division, gave a presentation on Nebraska's initiative and discussed his experience with the CTP program at the Association of State Floodplain Managers National Conference held in Charlotte, North Carolina. During his presentation, Brian emphasized the success of Nebraska's program was largely due to the team effort of DNR staff and involvement of local officials. By exploiting the powers of GIS and using available statewide databases the Department has delineated 1% frequency floodplains for approximately 2,300 stream miles in four counties (Dundy, Howard, Stanton, and Otoe) at the average cost of \$25/mile during the past year.

Building off this success the Floodplain Division recently submitted a \$136,500 grant application to FEMA to map 1% frequency floodplains in another eight Nebraska counties. These new counties include Thayer, Fillmore, Nance, Kearney, Thurston, Garden, Keith, and Scotts Bluff. If the grant is approved by FEMA, DNR staff will coordinate the mapping efforts and continue working with the county officials.

Water Administration Division Continued from page 1

Changes in use, construction modifications, changes in ownership, changes in status (an example is from active to inactive), and notices of abandonment are also required to be filed and made of record for water wells. **As of July 1, 2001**, there is a fee for filing most of these documents. **Changes in ownership will cost \$20. Changes in use, construction modifications, and status changes will cost \$10. Notices of abandonment may be filed without cost.** Under recently enacted LB 667, failure to file such change information in the Department allows the water well to meet the definition of an illegal water well.



transfer ground water off the overlying land for industrial use of 150 acre-feet or more; (3) transfers across state lines; (4) violate statutory well spacing; and, (5) geothermal resources development. In addition, persons transporting ground water for industrial purposes of less than 150 acre-feet are to file notices of transfer with the Department. The Department maintains a data base of such permits and has annual reporting of the amount of water used for all except for water well spacing permits.

Ground Water Management Plan Reviews

Ground Water Permits

Under State law ground water is only to be used on lands overlying the source, however the Department has authority to grant or deny applications for permits to: (1) transfer ground water off the overlying land for municipal or rural domestic use; (2)

The water administration division works very closely with the local natural resources districts in many areas. Under State law, the Director of the Department of Natural Resources is responsible for reviewing and approving or denying ground water management plans of the districts. In most instances, informal consultation occurs

between the districts and the divisions staff prior to formal submittal of their plans. When plans are submitted, they are forwarded to the Department of Environmental Quality, Health and Human Services System, Game and Parks Commission, and the Conservation and Survey Division of the University of Nebraska at Lincoln for their review. Often, the districts ask for review, either informal or formal of the rules they propose for adoption for regulation of ground water quantity or quality.



Surface Water Administration

People who use the State's surface water resources are required in most instances to obtain a permit from the Department for such use. Likewise, when a permit holder wishes to change any of the conditions of the permit, such as the location of use or the point of diversion, such change requires an application or a petition to the Department for modifications of the original permit. Changes of ownership are also required to be reported for surface water rights. Hearings may be required to hear objections to permits or modifications to permits. Division staff often act as hearing officers or assist in the process.

Once a permit is granted, the users are subject to having their permits administered according to the conditions of the permit, and in accordance with **"first in time is first in right."** The Department's field offices are responsible for making sure proper administration occurs. Thus, the water administration division and the field offices work closely together to inform the public of the conditions of their permits.

The Department also has an active adjudication program to make sure that water rights are being used in accordance with the law. Again, division staff work with the field offices to obtain the information required to determine whether water rights should be modified because of nonuse or forfeiture.

LB 667 Gets Results.....Thanks

News articles and press releases on LB 667 have gotten results from across Nebraska. This newly enacted law (*see section on LB667 in 2001 Legislative Session article*) among other things:

1. Requires water well contractor's to register water wells constructed **after July 1, 2001**.
2. Requires DNR to make available and allow **electronic registration by January 1, 2002**.
3. Requires **sellers of property** located outside the corporate limits of a municipality to complete a water resources update notice at the time land is sold and disclose whether there are surface water rights or water wells located on the property. There is a \$20 fee for filing the water resources update notice or a change of ownership.
4. Specifically states that water wells required to be registered that are not registered are illegal until registered. **All water wells except** for test holes, dewatering wells with intended use of less than 90 days, and **domestic water wells constructed prior to September 9, 1993 are required to be registered.**
5. Requires **water well owners, water well contractors, and pump installation contractors** to notify the Department by form of any pump installation or modifications to the construction of a water well or pump after the initial registration of the water well.

The Department received **over three hundred calls a day** for several days after news articles appeared across the state. As a result of these calls, hundreds of change of ownerships for existing wells, registrations for water wells that should have been previously registered, addresses for owners needing updated, and abandoned water wells have been reported. As a result the public is better informed on the requirements of LB 667.

The Department wishes to thank everyone for their assistance, and thank the public most of all for their patience and willingness to comply with water well registration requirements. Additional information on LB 667; the Department's water well registration data base, forms for registration, change of ownership and update notices can be found on the Department's web site at www.nrc.state.ne.us.



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State of Nebraska

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Nebraska

Department of Natural Resources

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The *Nebraska Resources* is a quarterly publication of the Nebraska Department of Natural Resources and is edited by Terry L. Cartwright, Public Information. Your comments and or suggestions are welcomed.

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Nebraska Department of Natural Resources....

....dedicated to good planning, management and sustainable use of Nebraska's land and water resources.